APPEAL NO. 010859
FILED JUNE 7, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 4, 2001. With regard to the sole issue before her the hearing officer determined that the respondent (claimant) sustained a compensable injury, in the form of an occupational disease, with a date of injury of _____. The appellant (carrier) files a request for review contending that the hearing officer's finding of injury was not supported by sufficient evidence; that the claimant has waived her claim by not timely notifying the employer or the carrier of her claim; and that the hearing officer erred in excluding evidence proffered by the carrier. The claimant responds that the hearing officer's decision is sufficiently supported by the evidence.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The hearing officer summarizes the evidence in her decision and we adopt her rendition of the evidence. The hearing officer summarized the claimant's testimony concerning the claimant's job duties and their repetitive nature during her eight years and eight months operating sewing machines for her employer, which for most of her years of employment required that she use a foot pedal. The claimant was diagnosed with plantar fasciitis and Dr. A, her treating doctor, related this condition to the claimant's employment.

The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993; Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence

as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find sufficient evidence to support the hearing officer's finding of injury.

Nor do we find any basis to find that the claimant waived her injury through not timely reporting it. There is no provision for waiving an injury. While there is a provision for relieving a carrier of liability for the failure of a claimant to timely report an injury[1], there was no issue of timely report of injury before the hearing officer. We find no error in the hearing officer not addressing an issue not before her.

The carrier also argues that the hearing officer erred in excluding exhibits it sought to admit due to these exhibits not being timely exchanged without good cause. The carrier argues that it established good cause for not timely exchanging these exhibits. To obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must show that the admission or exclusion was an abuse of discretion and that the error was reasonably calculated to cause and probably did cause the rendition of an improper decision. Texas Workers' Compensation Commission Appeal No. 992078, decided November 5, 1999; *see also* Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). We do not find that to be the case here.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge

[1]Section 409.002.